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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
	:	
CALPINE CORPORATION, <u>et al.</u> ,	:	Case No. 05-60200 (BRL)
	:	(Jointly Administered)
Debtors.	:	
	:	
	:	
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**DESIGNATION OF ITEMS TO BE INCLUDED IN RECORD ON APPEAL  
AND STATEMENT OF ISSUES TO BE PRESENTED**

The Official Committee of Equity Security Holders of Calpine Corporation, et al. (the “Equity Committee”)<sup>1</sup> hereby submits, pursuant to Federal Rule of Bankruptcy Procedure 8006, its (1) designation of items to be included in the record on appeal and (2) statement of issues to be presented on appeal to the United States District Court for the Southern District of New York of the following Orders of this Court:

Memorandum Decision and Order Granting, in part, Debtors’ Motion for an Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing to (A) Refinance Existing Postpetition Financing and (B) Repay Prepetition Debt;

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<sup>1</sup> Capitalized terms not defined herein shall have the meaning provided in the Debtors’ Motion For Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing to (A) Refinance Existing Postpetition Financing and (B) Repay Prepetition Debt; (II) Allowing Debtors’ Limited Objection to Claims; and (III) Determining Value of Secured Claims, filed on January 26, 2007 [Docket No. 3481].

(II) Allowing Debtors' Limited Objection to Claims; and (III) Determining Value of Secured Claims, entered March 5, 2007 (Docket No. 3875); and

Order (I) Granting Debtors' Limited Objection to Claim Numbers 2664, 3275, 3393 through 3421 (Inclusive), 3546 through 3554 (inclusive), 3586 through 3588 (inclusive), 3731, 4073, 5653 through 5730 (inclusive), 5791, and 5792; (II) Determining the Value of the CalGen Secured Debt Pursuant to Rule 3012 of the Federal Rules of Bankruptcy Procedure, and (III) Authorizing Repayment of CalGen Secured Debt, entered March 12, 2007 (Docket No. 3970).

### **Designation of Record Items**

The Equity Committee adopts the Designation of Record Items filed today by the Debtors and the Official Committee of Unsecured Creditors.

### **Statement of Issues To Be Presented on Appeal**

Whether the Bankruptcy Court erred in holding that the Debtors' repayment of prepetition debt to the CalGen Lenders constituted a breach of the CalGen loan agreements and indentures and that the CalGen Lenders were entitled to damages for this purported breach, despite having correctly held that (a) the relevant "no-call" provisions forbidding the repayment are not enforceable in bankruptcy, and (b) the debt had been accelerated and matured upon the commencement of the bankruptcy by the terms of the loan agreements and indentures and by operation of the Bankruptcy Code.

New York, New York  
Dated: March 26, 2007

Respectfully submitted,

FRIED, FRANK, HARRIS, SHRIVER  
& JACOBSON LLP

/s/ Gary Kaplan

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